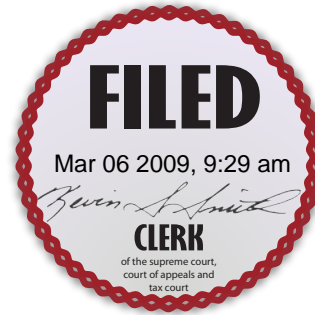


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**IN THE
COURT OF APPEALS OF INDIANA**

R.C. and C.C.

Appellants-Respondents,

vs.

MADISON COUNTY DEPARTMENT
OF CHILD SERVICES,

Appellee-Petitioner.

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No. 48A02-0810-JV-878

APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Jack L. Brinkman, Judge

Cause Nos. 48D02-0802-JT-58, 48D02-0802-JT-59, 48D02-0802-JT-60 and 48D02-0802-JT-61

March 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

R.C. (“Mother”) and C.C. (“Father”) appeal from the trial court’s order involuntarily terminating their parental rights. Mother and Father raise a single issue for our review, namely, whether the trial court’s order is supported by sufficient evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of four minor children, C.L.C., I.R.C., A.N.C., and A.R.C. (collectively, “the children”). On June 12, 2007, the Madison County Department of Child Services (“DCS”) filed a petition alleging the children to be children in need of services (“CHINS”). In relevant part, the DCS’ petition alleged as follows:

- b) On 6/08/2007 [DCS] was contacted by the Madison County Trauma Team in regards to [A.R.C.] The trauma team stated that [Father] had brought his children to Saint John’s Hospital and was stated that [A.R.C.] had fallen down basement stairs around 10 [a.m.] on 6/8/2007.
- c) On 6/8/2007 Family Case Manager Corin Dobbs[] made contact with Saint John’s Hospital. Saint John’s Hospital stated that [A.R.C.] had some hemorrhaging in her eyes, extensive bruising all over her body and that they were very concerned about possible head injuries. Saint John’s Hospital stated that they had already transported [A.R.C.] by helicopter to Methodist Hospital in Indianapolis. Saint John’s Hospital also stated that [Father] had contacted a relative to come and get the other three children from the hospital. [Father] had done this prior to any [DCS] involvement. Saint John’s stated that they did not know who the relative was Saint John’s stated that they had just given [A.N.C.] a quick once over and did not see anything wrong with her.

* * *

- e) On 6/8/2007 at approximately 7:30 [p.m.] Corin Dobbs was contacted by Detective Larry Crenshaw of the Anderson Police Department. Detective Crenshaw stated that he had been to the house in attempts to find [Father]. Detective Crenshaw stated that he did not find [Father] at the home, as he was already at Methodist Hospital. Detective Crenshaw stated while he was at [Mother and Father's] home he observed the conditions of the home to appear to be unsafe and unsanitary for the children.

* * *

- i) On 6/9/2007 Corin Dobbs received a telephone call from Dr. Weiss, of Methodist Hospital. Dr. Weiss stated that they had just discovered [A.R.C.] to have a left femur fracture and that the fracture was not a result of the fall. Dr. Weiss stated that this fracture appeared to be from at least 4 to 5 days old. Dr. Weiss also stated that the bruising that [A.R.C.] has is not consistent with the fall and that she has different stages of bruising suggesting that the bruises were from over a period of time. Dr. Weiss at this time expressed her concerns about the care of the [children]. Dr. Weiss requested that [A.N.C.] . . . be taken to a hospital and examined for any possible fractures or injuries.

* * *

- k) On 6/9/2007 [A.N.C.] was taken to Saint John's Hospital and was given a skeletal survey and a head CT Scan. The results showed no concerns at all.
- l) On 6/9/2007 Corin Dobbs received a telephone call from [Mother]. [Mother] stated that she was at Methodist and that she was being told that [A.R.C.] also has a broken clavicle and a broken ankle and that these broken bones were appearing to be at least 3 to 4 weeks old. . . .
- m) . . . Dr. Weiss also met face to face with Corin and the [] family [on 6/10/2007]. Dr. Weiss confirmed the concerns for [A.R.C.'s] injuries and stated that the injuries were not consistent with a fall on 6/8/2007 down stairs. Doctor Weiss also stated that the hospital is concerned about [A.R.C.] being below the third percentile for her age. Doctor Weiss stated that the hospital had been made aware of [A.R.C. and A.N.C.] being hospitalized once before for failure to

thrive. Dr. Weiss stated that they are concerned that [A.R.C.] is still showing signs of failure to thrive.

- n) On 6/11/2007 Family Case Manager Dobbs spoke with Dr. Toni Laskey, Child Abuse Expert for Methodist Hospital. . . . Dr. Laskey also stated that they are very concerned about the fact that [A.R.C.] is so far behind on her immunizations and the fact that the [children] had not been taken to a doctor in almost a full year.

* * *

- p) On 6/11/2007 [C.L.C.], [I.R.C.], and [A.N.C.] were examined by Doctor Joanne Ray. Doctor Ray stated that [I.R.C.] was also behind on his immunizations and updated him at this time. Dr. Ray stated that she would not be able to update [A.N.C.] on her immunizations because it was found that she has a fever and a severe infection in both of her ears. Dr. Ray stated that [C.L.C.] appeared to be healthy.
- q) All four of the [children] . . . have been detained by the [DCS] and placed into foster care for safe keeping.

Appellants' App. at 17-19.¹ Also on June 12, the Mother and Father entered "a general admission to the allegations contained in the Petition." Id. at 25-28. The trial court ordered the children to remain in foster care and ordered the DCS to prepare a predispositional report.

On July 12, 2007, the court held the disposition hearing. Afterwards, the court ordered as follows: (1) the children were to remain in foster care; (2) the parents were to "receive a complete mental health evaluation and comply with all recommendations made as a result of this evaluation," id. at 29; (3) Father was to enroll in an anger management course; (4) visits between the parents and the children were to be fully supervised; (5) the parents were to participate in parenting classes and "continue to work

¹ The pages of the Appellants' Appendix are not clearly numbered.

with the home-based caseworker . . . and comply with all recommendations made,” id. at 30; (6) the parents were to pay for the services they received; (7) Father was to “obtain and maintain employment,” id.; and (8) Mother was to pay five dollars per week per child.

On February 11, 2008, the DCS filed its petition for the involuntary termination of the Mother and Father’s parental rights over the children. The court held a factfinding hearing on that petition on June 24, 2008. At that hearing, Tashia Cox, who had been assigned to be the family case manager in late June 2007, testified as follows:

Q So . . . the substantial injuries [in]curred by [A.R.C.], the conditions of the home were unsafe[,] and all of the children were behind on the immunizations. Is that correct?

A Yes.

Q And so the recommendations that [were] made in the Predispositional Report that the Court later adopted were meant to address those issues. Is that fair to say?

A Yes.

* * *

Q Now in regards to the services that they were ordered to do[,] you indicated that they were both ordered to complete mental health evaluations?

A Correct.

Q Ok and did they do that?

A [Mother] did receive a mental health evaluation in September 2007 but she did not participate in the counseling that was recommended from that evaluation and [Father] received a mental health . . . evaluation in May of 2008.

Q And were there recommendations for [Father] to do additional services as part of the assessment?

A He was recommended for Anger Management.

Q And has he completed that?

A He has initiated that.

Q And when did he initiate that?

A In May of 2008. I believe he has been to about three sessions.

* * *

Q Now I'm looking at the Dispositional Order here and it also indicates that [the] parents were to enroll and participate in a parenting class. Did they do that?

A [W]e discussed that they could do the Home-Based Service as the parenting. . . .

Q Ok did they participate in Home-Based Services?

A There was minimal participation I would say and the service has been closed twice.

Q But you did two referrals for them to participate in services?

A Correct.

Q Despite them failing to participate in that same Home-Based Service[] for years passed [sic] and is that correct?

A Correct.

Q Now in regards to the counseling that [Mother] was supposed to do[,] did she ever give you any reason as to why she didn't participate in counseling?

A No[,] she maintained for several months with me that she was attending. [B]ut then I contacted the agency . . . and they had stated that she wasn't.

Q So [Mother] had lied to you about her participation in that program?

A I believe so, yes.

Q Ok now in regards to [Father's] Anger Management . . . you're indicating that he did not enroll in that until May 2008?

A Correct.

Q So almost a year later he decides to enroll in Anger Management. Is that correct?

A Yes.

Q And he has not completed it? Is that correct?

A Correct.

Q And based on his history, he may not complete that. Is that fair to say?

A He might not.

Q Now in regards to [Father's] employment[,] has he maintained employment the entire time this department has been involved with this most recent case?

A I don't believe so. I think it's been off and on.

Q Is he working now?

A I'm not sure.

Q He hasn't reported any employment to you. Is that fair to say?

A Correct.

Q Has he paid any child support?

A No.

Q Has Mother paid any child support?

A No.

* * *

Q Are [Mother and Father] residing together . . . ?

A I believe so.

Q But they don't have a home of their own[,] is that correct?

A That's correct.

Q Now at some point in time did they have visitation?

A Yes.

Q Ok and how did those visits go?

* * *

A I did observe one visit . . . and it did appear to me that [A.R.C.] was very uncomfortable with [Father].

* * *

Q Did . . . the parents attend the visitations regularly at the one Kids Peace was supervising?

A There were several visits that were missed.

* * *

Q And [when the visits stopped being at Kids Peace] then where did the visits take place?

A The Exchange Club. The Children's Bureau.

Q And did they visit regularly then?

A No.

* * *

Q And then subsequent[] to that this Court ordered that visitation cease. Is that correct?

A Correct.

Q And do you remember the rationale in why that was?

A Th[at] neither parent was participating in . . . any services.

Q And did [M]other test positive for marijuana as well?

A Correct.

Q And they were also sporadic on their visits. Is that correct?

A Yes.

Q And after the criminal charges were filed there was a No Contact Order put in place as to [the] youngest child as well[,] correct?

A Correct.

Q And as of today th[ere] is still a No Contact Order. Do you know?

A Yes.

* * *

Q [Has] either parent request[ed] that visitation be started again?

A No they haven't.

* * *

Q And before the children [were] removed or soon after the children were removed or during the time the children were removed, did [Mother and Father] have Ms. Robeton supervising their children?

A Yes.

Q And there is currently a Termination of Parental Rights Petition for Ms. Robeton as well?

A Yes.

* * *

Q Now[,] in regards to the drug screen, did you refer [Mother] to any additional services after she tested positive to the marijuana?

A I did request that she obtain a substance abuse evaluation.

Q Did she do that?

A No.

Q And have you requested that either parent participate in any other subsequent drug screen since that time?

A I did request one last week.

Q Did they do it?

A No.

* * *

Q So do you believe at this point that the conditions that associated removal can be remedied?

A No.

Q And why not?

A I don't believe either parent has shown they're willing or capable to take the necessary steps to correct the problems.

* * *

Q And to your knowledge when was the last time either parent had visitation or visited with the children?

A I believe [Mother] may have visited late March 2008 . . . and [Father,] his last visit would have been in the fall.

Q Fall of 2007?

A Fall of 2007.

* * *

Q Now in terms of the children[,] do they have any special needs?

A Yes.

Q Ok let's start with [C.L.C.] Does he have any special needs?

A He does have a speech delay.

Q Ok and what types of services does he get to help with the speech delay?

A He was receiving speech therapy. He was attending that through Head Start when he was initially taken into custody.

Q Ok.

A [W]hen he was moved to the Maternal Grandmother's home there was an issue with availability with Head Start So that was postponed but he has been evaluated by the Anderson Community School System and he is supposed to start speech again in the fall.

* * *

Q Ok now how about [I.R.C.]?

A He has also has a speech delay and developmental delay.

* * *

Q And where was he receiving developmental therapy through?

A That was through First Steps.

Q Is he still receiving that?

A I believe he has aged out and that he has been evaluated to receive speech therapy from Head Start in the fall.

* * *

Q How about [A.N.C.]? Does she have any special needs?

A Also speech and developmental.

Q What type of developmental problems does she have?

A Again I'm not sure specifically. [B]ut I think at one point she was diagnosed with failure to thrive also.

Q Is she receiving any services through Head Start or First Steps?

A First Steps speech and developmental therapy.

Q And then how about [A.R.C.]?

A [S]he was receiving physical therapy, speech therapy, and developmental therapy.

Q Is she still receiving that?

A Yes.

* * *

Q Is it [DCS'] intention to leave the children together where they're at [with the Maternal Grandmother]?

A Yes.

Q Ok do you believe this is in the children's best interest[s] that parental rights get terminated?

A I do.

Q Ok and why's that?

A I don't believe either parent has shown stability or willingness to resolve any problems or accountability for those problems that would need to be there to resolve them.

Q And what is the [DCS'] plan if parental rights are terminated?

A Adoption.

Q And do you believe all four children are adoptable?

A Yes.

Transcript at 32, 34-48, 51-52. Cox's testimony was substantially corroborated by Ann Cummings, the family consultant from Kids Peace, and Stephanie Jansen, the home-based caseworker from the Exchange Club.

On July 30, 2008, the trial court entered its order terminating Mother and Father's parental rights over the children. In its order, the trial court found that there was "a reasonable probability that the conditions that resulted in the children's removal from their parents will not be remedied[;]" that there was "a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children[;]" that "[t]ermination is in the best interest[s] of the children[;]" and that the DCS had "a satisfactory plan for the care and treatment of the children[,] which is adoption." Appellants' App. at 34. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

Initially, we observe that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d

258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836. In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2007). The State must establish each of these allegations by clear and convincing evidence. Egley v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Analysis

Mother and Father challenge the sufficiency of the evidence supporting the trial court's order terminating their parental rights. Specifically, they argue that the DCS failed to establish by clear and convincing evidence each of the following: (1) "that the conditions resulting in the removal of the children would not be remedied," Appellants' Brief at 9, or that "the continuation of the parental relationship poses a threat to the well being of the children," *id.* at 11; and (2) that termination of their rights was in the best interests of the children. We address each argument in turn.

A. Reasonable Probability Conditions Will Not Be Remedied

At the outset, we observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find that only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. *See L.S.*, 717 N.E.2d at 209. Here, the trial court determined that the DCS presented sufficient evidence to satisfy both requirements of subsection (B). Specifically, the trial court found that the DCS established a reasonable probability the conditions resulting in removal of the children from Mother and Father's care will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being. As discussed below, we need only consider whether sufficient evidence supports the trial court's former finding.

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the

time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” Id. Pursuant to this rule, courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent’s response to those services, as evidence of whether conditions will be remedied. Id.

A county Department of Child Services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. In addition, the failure to exercise the right to visit one’s child demonstrates a “lack of commitment to complete the actions necessary to preserve the parent-child relationship.” Id.

Here, the evidence and reasonable inferences therefrom demonstrate a reasonable probability that the conditions that resulted in the children’s removal from Mother and

Father's care would not be remedied. As testified to by Cox and other witnesses, Mother and Father repeatedly refused to participate in DCS-related services. Mother did not participate in the counseling recommended to her after her mental health evaluation. Father did not participate in anger management until nearly a year after ordered to do so (and after the DCS filed its petition to terminate his parental rights), and then he only attended three sessions in two months. There was minimal participation in home-based services, and those services were twice cancelled due to Mother and Father's failure to participate. Father did not maintain steady employment. Neither parent paid child support, neither parent regularly or consistently visited any of their four children, and after Mother tested positive for marijuana neither parent participated in drug screening as requested. Finally, when specifically asked whether she believed "that the conditions . . . associated [with] removal can be remedied," Cox responded that she did not believe so because "[n]either parent has shown they're willing or capable to take the necessary steps to correct the problems." Transcript at 45.

In light of that evidence, Mother and Father emphasize on appeal their own testimony. But those arguments amount to an invitation for this court to reweigh the evidence, which we will not do. D.D., 804 N.E.2d at 264. Again, a trial court must determine a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. And here, the DCS presented clear and convincing evidence to establish at least a reasonable probability that the conditions resulting in the children's removal from Mother and Father's care would

not be remedied. As such, we need not address the trial court's additional conclusion that continuation of the parent-child relationship poses a threat to the children's well-being. See I.C. § 31-35-2-4(b)(2)(B).

B. Best Interests of the Children

We next turn to Mother and Father's arguments that the DCS failed to provide sufficient evidence to establish that termination of their parental rights was in the children's best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. Id. The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Here, again, the evidence and reasonable inferences therefrom support the trial court's order. Cox testified that, in one of his few visits with his children, A.R.C. was uncomfortable around Father. Cox also testified that each of the four children has special needs. Each of the four children requires speech therapy. I.R.C., A.N.C., and A.R.C. each have special needs pertaining to developmental therapy. And A.R.C. was also still

receiving physical therapy at the time of the termination hearing. Finally, Cox testified that she believed termination of Mother and Father's parental rights to be in the children's best interests because "[n]either parent has shown stability or willingness to resolve any problems or accountability for those problems" Transcript at 51. Cox's recommendation to terminate Mother and Father's parental rights was echoed by Diana Williams, the court-appointed special advocate in this case.

Mother and Father's challenge the DCS' evidence by again referencing their own testimony. But that argument is for this court to reweigh the evidence, which we will not do. D.D., 804 N.E.2d at 264. The recommendations of Cox, the case manager, and Williams, the court-appointed special advocate, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the children's best interests. See M.M., 733 N.E.2d at 13.

Conclusion

A thorough review of the record leaves this court convinced that the trial court's judgment terminating Mother and Father's parental rights over the children is supported by clear and convincing evidence. We will reverse a termination of parental rights "only upon a showing of 'clear error'—that which leaves us with a definite and firm conviction that a mistake has been made." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egley, 592 N.E.2d at 1235). We find no such error here, however, because the DCS sufficiently demonstrated that the conditions that resulted in the removal of the children from Mother and Father's care will not be remedied and that termination of

Mother and Father's parental rights was in the best interests of the children. As such, we must affirm the trial court's order involuntarily terminating Mother and Father's parental rights.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.